ORIGINAL

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Attorneys for Defendants
GB ACQUISITIONS, INC. and
GORDON BIERSCH BREWERY
RESTAURANT GROUP, INC.

FILED
08 MAY -2 PM 12:44
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

'08 CV 0805 W AJB

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANGELIQUE COBB, on behalf of herself and all others similarly situated, Plaintiffs, vs. GORDON BIERSCH BREWING COMPANY, INC., a California Corporation; GB ACQUISITIONS, INC., a Tennessee Corporation; GB ACQUISITIONS, INC., dba GORDON BIERSCH BREWERY RESTAURANT GROUP, INC.; and DOES 1 through 125, inclusive, Defendants.	CASE NO. **DEFENDANT GB ACQUISITIONS, INC.'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332 (D) (CLASS ACTION) AND 1453**

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant GB Acquisitions, Inc., ("GB") hereby removes to this Court the San Diego Superior Court state court action described above, and states that removal is proper for the reasons set forth below:

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San Diego, CA 92130

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I. JURISDICTION

1. This action is a civil action which may be removed to this Court pursuant to 28 *U.S.C.* § 1332(d) and 28 *U.S.C.* § 1453 in that this action is a class action, at least one member of the class is a citizen of a State different from at least one Defendant, and the matter in controversy as described in the Complaint exceeds the sum of $5,000,000.00, excluding interest and costs.

II. ALLEGATIONS

2. GB was served with a copy of the Complaint on April 3, 2008. *See* Declaration of Jennifer B. Robinson (hereafter, "Robinson Dec."), Exhibit 1. All process, pleadings, papers and orders served on GB on April 3, 2008 are attached. *See* Robinson Dec., Exhibit 1. Defendant Gordon Biersch Brewery Restaurant Group also was served on April 3, 2008. *See* Robinson Dec., Exhibit 1 at Page 1. Upon information and belief, Defendant Gordon Biersch Brewing Company was served on April 3, 2008 as well. This notice of removal is timely within the meaning of 28 *U.S.C.* §1446(b), as thirty days have not elapsed since receipt of a copy of the Complaint by GB.

3. Plaintiff Angelique Cobb ("Plaintiff") brought this action on behalf of herself and as a class action on behalf of other hourly employees including but not limited to cooks, servers, bussers, hosts/hostesses, cashiers, dishwashers and cleaners. *See* Robinson Dec., Exhibit 1 at Pages 5 and 9. Plaintiff alleges that this group is comprised of "hundreds" of members, who have been employed by Defendants "at any time four years prior to the filing of this action through the date of trial." *See* Robinson Dec., Exhibit 1 at Pages 9 and 13. Accordingly, this civil action is a class action under 28 *U.S.C.* §1332(d)(1).

4. Plaintiff and the putative class members described in the Complaint are employees who allegedly work or have worked in Defendants' facilities in California. *See* Robinson Dec., Exhibit 1 at Pages 7, 9-10 and 13. Plaintiff admits that she resides in San Diego County, California. *See* Robinson Dec., Exhibit 1 at Page 7. Plaintiff alleges that this putative class consists of "hundreds of employees, many in the State of California." *See* Robinson Dec.,

///

Exhibit 1 at Pages 9-10 and 13. Therefore, many of the Plaintiffs, and at very least, the one named Plaintiff, Angelique Cobb, are citizens of the State of California.

5. GB was incorporated in the State of Tennessee, and its principal place of business is in Chattanooga, Tennessee. *See* Robinson Dec., ¶ 3. *See also,* Robinson Dec., Exhibit 1 at Page 4 and Exhibit 2 at Pages 28-29, documents from the Tennessee Secretary of State regarding GB's articles of incorporation and showing GB's principal place of business. Defendant Gordon Biersch Brewery Restaurant Group, Inc. also was incorporated in the State of Tennessee, and its principal place of business is in Chattanooga, Tennessee. *See* Robinson Dec., ¶ 4. *See also*, Robinson Dec., Exhibit 1 at Page 4 and Exhibit 3 at Pages 30-31, documents from the Tennessee Secretary of State regarding Gordon Biersch Brewery Restaurant Group, Inc.'s articles of incorporation and showing its principal place of business. Defendant Gordon Biersch Brewing Company, Inc. was incorporated in the State of California, and its principal place of business is in Las Vegas, Nevada. *See* Robinson Dec., ¶ 5. *See also*, Robinson Dec., Exhibit 1 at Page 4 and Exhibit 4 at Page 32, document from the California Secretary of State regarding Gordon Biersch Brewing Company, Inc.'s state of incorporation and showing its principal place of business.[1] Accordingly, at least one of the Plaintiffs (Ms. Cobb) is a citizen of a State different from at least one of the Defendants (GB and Gordon Biersch Brewery Restaurant Group, Inc.).

6. Plaintiff alleges that all of the Defendants, separately and collectively, have violated the California IWC Wage Orders, the California Labor Code and the California Business and Professions Code by requiring members of the putative class to work off-the-clock while clocked out for meal periods, failing to provide them with meal and rest periods, failing to pay them half of a usual or scheduled day's wages for days they appeared for work but were not provided with at least half of a usual or scheduled day's work and failing to compensate them for required expenses such as specific work shirts and non-slip safety shoes. *See* Robinson Dec., Exhibit 1 at Pages 7-12. Plaintiff does not in fact distinguish the Defendants from one another in

[1] The class identified in this action consists of hourly restaurant employees. Defendant Gordon Biersch Brewing Company, Inc. does not operate restaurants, has not done so in the past four years and will be filing a motion to be dismissed as a party to this lawsuit on this ground if the parties cannot agree voluntarily to dismiss the same. *See* Robinson Dec., ¶¶ 7-8.

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any regard throughout the Complaint. *See* Robinson Dec., Exhibit 1 at Page 9. Therefore, GB, Gordon Biersch Restaurant Brewery Group, Inc. and Gordon Biersch Brewing Company, Inc. all are "primary defendants" in this action.[2]

7. The actual primary Defendants have not had any other class actions filed against them in the past three years. *See* fnt. 2, *infra*.

8. Plaintiff alleges in the Complaint that she and the putative class have sustained damages and are owed money as a result of Defendants' alleged misconduct. Specifically, the Complaint states that over the past four years "hundreds" of hourly employees have been denied wages pursuant to California IWC Wage Orders and the California Labor Code. *See* Robinson Dec., Exhibit 1 at Pages 7-12. The actual number of individuals holding hourly positions in restaurants operated during the past four years by GB is over 2,000. *See* Robinson Dec., ¶ 10. The average hourly rate of pay for Plaintiff Cobb during the relevant time period was approximately $7.50 per hour plus tips. *Id.* To calculate the amount in controversy, i.e., the amount sought in the Complaint, one would multiply the number of putative class members in each year times the number of violations per year times four years times their average hourly rate. Even assuming only 1,000 class members, as the Complaint alleges "hundreds", and assuming on average even one meal violation and one rest period violation per class member per approximately ½ of all work days per year for the past four years, this amount equals $10.8 million (1,000 employees x 180 meal period violations x 4 years x $7.50 = $5.4 million plus 1,000 employees x 180 rest period violations x 4 years x $7.50 = another $5.4 million, totaling $10.8 million). So even by this conservative estimate, Plaintiff is seeking over $10 million in damages on behalf of herself and the putative class.

III. LEGAL AUTHORITY

9. The Class Action Fairness Act of 2005 ("CAFA"), which enacted 28 *U.S.C.* §§ 1332(d) and 1453, provides the federal district courts with jurisdiction and allows any defendant

[2] Again, Defendant Gordon Biersch Brewing Company, Inc. has not been properly named as a defendant in this matter as it does not operate restaurants and has not done so in the past four years. *See* Robinson Dec., ¶ 7. Reference here to its being a "primary defendant" is based on the indistinguishing allegations made against all of the Defendants on the face of the Complaint. Id.

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to remove the case from state court to federal district court if: (1) the case is a class action; (2) the amount in controversy exceeds $5 million, exclusive of interest and costs; and (3) any plaintiff is a citizen of a State different from any defendant. 28 *U.S.C.* §§ 1332(d)(2) and 1453. Each of these requirements is met in this case. Plaintiff contends that this case is a class action. *See* Robinson Dec., Exhibit 1 at Pages 4-6. As set forth above, the amount in controversy exceeds $5 million, excluding interest and costs. The one named Plaintiff and, per the Complaint, "many" members of the putative class, are citizens of California, and two of the Defendants are Tennessee corporations and have their principal place of business in that State. *See* Robinson Dec., Exhibit 1 at Pages 4, 7, 9-10 and 13 and Exhibit 2 at Pages 28-29 and Exhibit 3 at Pages 30-31. Accordingly, each of the requirements of the CAFA has been met and this case is properly removed to this Court.

10. It is anticipated that Plaintiff may argue that this Court is obligated under the CAFA to decline jurisdiction of this matter and remand the case back to state court. Such anticipated argument fails under the very language of the statute. *See* 28 *U.S.C.* § 1332(d)(4). Section 1332(d), in relevant part, provides:

> (4) A district court shall decline to exercise jurisdiction under paragraph (2) —
>
> (A)(i) over a class action in which —
>
> (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
>
> (II) at least 1 defendant is a defendant —
>
> (aa) from whom significant relief is sought by members of the plaintiff class;
>
> (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
>
> (cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

Id. (emphasis added)

As noted above, none of the actual primary Defendants are citizens of California.

11. It is anticipated that Plaintiff also may argue that this Court has discretion to remand this case to state court under 28 *U.S.C.* §1332 (d)(3). Again, such an argument would fail because the Court does not have discretion to remand unless all of the primary defendants are citizens of the state in which the action originally was filed (California). Id. As noted above none of the actual primary Defendants in this case are citizens of California.

WHEREFORE, GB requests that this matter be removed from the Superior Court of the State of California for the County of San Diego to the United States District Court for the Southern District of California.

Dated: May 2, 2008

ANDREWS · LAGASSE · BRANCH & BELL LLP

By: Margaret C Bell

Margaret C. Bell
Attorneys for Defendants
GB ACQUISITIONS, INC. AND
GORDON BIERSCH BREWERY
RESTAURANT GROUP, INC.

ANDREWS · LAGASSE · BRANCH & BELL LLP
11232 El Camino Real, Suite 250
San Diego, CA 92130

ANGELIQUE COBB v. GORDON BIERSCH BREWING, et al.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Andrews · Lagasse · Branch & Bell LLP 11232 El Camino Real, Suite 100, San Diego, CA 92130. On May 2, 2008, I served the within documents:

DEFENDANT GB ACQUISITIONS, INC.'S NOTICE OF REMOVAL UNDER 28 U.S.C. §§1332(d) (CLASS ACTION) AND 1453

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, California, addressed as set forth below.

☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Andrews · Lagasse · Branch & Bell LLP described below, addressed as follows:

☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by Express Mail by U.S. post office as part of the ordinary business practices of Andrews · Lagasse · Branch & Bell LLP described below, addressed as follows:

Michael D. Singer J. Jason Hill COHELAN & KHOURY 605 C Street, Suite 200 San Diego, CA 92101 (619) 595-3001 Attorneys for Plaintiff ANGELIQUE COBB	Jennifer B. Robinson MILLER & MARTIN PLLC 1200 One Nashville Place 150 Fourth Avenue North Nashville, Tennessee 37219-2433 (615) 244-9270 Co-Counsel for Defendants GB ACQUISITIONS, INC. and GORDON BIERSCH BREWERY RESTAURANT GROUP, INC.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 2, 2008, at San Diego, California.

Erika Andrade

Andrews, Lagasse, Branch & Bell LLP
11232 El Camino Real, Suite 250
San Diego, CA 92130

JS 44 (Rev. 12/07)

ORIGINAL

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 08 MAY -2 PM 12:45
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

I. (a) PLAINTIFFS
ANGELIQUE COBB

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael D. Singer/J. Jason Hill, Cohelan & Kahoury, 605 C St., Suite 200, San Diego, CA 92101, (619) 595-3001

DEFENDANTS
GORDON BIERSCH BREWING COMPANY, INC., et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
'08 CV 0805 W AJB
Margaret C. Bell, Andrews Lagasse Branch & Bell, LLP, 11232 El Camino Real, Ste. 250, S.D., CA 92130, (858) 345-5080

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☒ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 28 USC §1332; 28 USC §1453
Brief description of cause: Wage and hour class action

VII. REQUESTED IN COMPLAINT: ☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 5/2/08 SIGNATURE OF ATTORNEY OF RECORD Margaret C Bell

FOR OFFICE USE ONLY

RECEIPT # 150453 AMOUNT $350 — APPLYING IFP JUDGE MAG. JUDGE

05/02/08 PB

ANGELIQUE COBB v. GORDON BIERSCH BREWING, et al.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Andrews · Lagasse · Branch & Bell LLP 11232 El Camino Real, Suite 100, San Diego, CA 92130. On May 2, 2008, I served the within documents:

CIVIL COVER SHEET

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, California, addressed as set forth below.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 2, 2008, at San Diego, California.

Erika Andrade

Andrews, Lagasse, Branch & Bell LLP
11232 El Camino Real, Suite 250
San Diego, CA 92130

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150453 - MB

May 02, 2008
12:44:33

Civ Fil Non-Pris
USAO #.: 08CV0805 CIVIL FILING
Judge..: THOMAS J WHELAN
Amount.: $350.00 CK
Check#.: BC68661

Total-> $350.00

FROM: ANGELIQUE COBB VS
GORDON BIERSCH BREWING CO.
ET AL